

STATE OF MICHIGAN
COURT OF APPEALS

JOHN KOTSONIS,

Plaintiff-Appellant,

v

RAYMOND ANGLIN d/b/a ANGLIN GENERAL
CONTRACTING,

Defendant-Appellee.

UNPUBLISHED

August 6, 2009

No. 284440

St. Clair Circuit Court

LC No. 06-001338-CK

Before: Saad, C.J., and Sawyer and Borrello, JJ.

MEMORANDUM.

Following a jury trial, plaintiff appeals by right the trial court's denial of his motion for a judgment notwithstanding the verdict or for a new trial. For the reasons set forth in this memorandum, we affirm.

Plaintiff's claim arose from defendant's installation of a roof on plaintiff's home. Problems with condensation and interior moisture developed shortly after defendant completed his work. Plaintiff alleged that these problems were the result of defendant's failure to install a proper ventilation system with the roof. Plaintiff asserted breach of contract, breach of warranty, and negligence claims against defendant. The jury found no breach of contract and no breach of warranty. On the negligence claim, the jury found that defendant had failed to construct the roof according to industry standards, but further found that this failure was not a proximate cause of plaintiff's damages. Following the jury's verdict, plaintiff brought a motion for a judgment notwithstanding the verdict or a new trial under MCR 2.610 and 2.611, respectively. Following the trial court's denial of plaintiff's motions, this appeal ensued.

This Court reviews de novo a trial court's denial of a motion for judgment notwithstanding the verdict. *Prime Financial Services LLC v Vinton*, 279 Mich App 245, 255; 761 NW2d 694 (2008). Accordingly, we review the evidence and make all reasonable inferences in the light most favorable to defendant, as the nonmoving party. *Id.* As for the motion for a new trial, the Court reviews the trial court's decision for an abuse of discretion. *Allard v State Farm Ins Co*, 271 Mich App 394, 406; 722 NW2d 268 (2006). "When a party challenges a jury's verdict as against the great weight of the evidence, this Court must give substantial deference to the judgment of the trier of fact. If there is any competent evidence to support the jury's verdict, we must defer our judgment regarding the credibility of the witnesses." *Id.* at 406-407. "The Michigan Supreme Court has repeatedly held that the jury's verdict must be

upheld, ‘even if it is arguably inconsistent, ‘[i]f there is an interpretation of the evidence that provides a logical explanation for the findings of the jury.’ ‘[E]very attempt must be made to harmonize a jury’s verdicts. Only where verdicts are so logically and legally inconsistent that they cannot be reconciled will they be set aside.’” *Id.* at 407. (internal citations omitted).

Plaintiff first argues that the jury’s verdict on proximate cause must be overturned. Proximate cause is normally a factual issue for a jury, and the issue should be decided by a court only if there is no dispute on the underlying facts and no reasonable mind could differ regarding whether the defendant’s conduct caused the plaintiff’s injury. *Holton v A+ Ins Assoc, Inc*, 255 Mich App 318, 326; 661 NW2d 248 (2003); *Nichols v Dobler*, 253 Mich App 530, 532; 655 NW2d 787 (2002). Here, we decline to overturn the jury’s verdict on proximate cause, because the trial evidence presented factual issues on the proximate cause question. In particular, there was conflicting evidence as to whether defendant intended his installation of insulation to be permanent. Defendant testified that he installed the insulation’s vapor barrier upside down, expecting plaintiff to arrange to have the insulation removed and reinstalled right side up during drywall repair on the ceiling. Reasonable minds could differ as to whether defendant’s installation of the insulation was a proximate cause of the moisture problem based on the testimony that defendant expected the installation to be reinstalled. Reasonable minds could also differ as to whether defendant failed to comply with any other industry standards. The record indicates that the remedy for the ventilation problems may have required redesign of the roof. The trial evidence was conflicting as to whether redesign was within defendant’s obligations as a roofer.

Plaintiff next argues that the jury’s verdicts on the breach of contract and breach of warranty claims were erroneous. Having reviewed the trial exhibits and the witnesses’ testimony, we find that the record contains sufficient evidence to support the jury’s verdict. Although the record contains conflicting testimony, the conflicts included matters of credibility upon which we must defer to the jury. *Stallworth v Hazel*, 167 Mich App 345, 350; 421 NW2d 685 (1988). Our proper role, and that of the trial court, was to give the jury’s verdict proper deference. See, *Lagalo v Allied Corp*, 457 Mich 278; 577 NW2d 572 (1998). Accordingly, we affirm the jury’s verdict.

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Stephen L. Borrello